

Federal Communications Commission

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Amendment of Part 0 of the Commission's)	
Rules to Implement the Electronic)	GC Docket No. 97-143
Freedom of Information Act Amendments)	
of 1996)	

REPORT AND ORDER

Adopted: September 18, 1997; Released: September 23, 1997

By the Commission:

1. In this Order, we amend Part 0 of our Rules to implement the amendments to the Freedom of Information Act ("FOIA") enacted in the Electronic Freedom of Information Act Amendments of 1996 ("EFOIA").¹

Discussion

2. We instituted this proceeding to conform our rules to EFOIA's requirements governing electronic records and to implement the EFOIA directive that we provide for the expedited processing of FOIA requests.² Only two comments were received, neither of which addressed the substance of our proposals.³ For the reasons stated in the *Notice*, we adopt, as proposed, the following amendments to our Rules: amendments to section 0.461(a), to reflect the EFOIA requirement that agencies honor requests that records be provided in specific formats; amendments to section 0.461(g), to permit 20 working days to respond to initial FOIA requests and to provide requesters with the opportunity to both limit the scope of their requests or negotiate a time frame for processing requests; and amendments to sections 0.441, 0.443, 0.453, 0.455, and 0.460, to provide the public with better guidance concerning the availability of Commission records. We also adopt, with a minor modification described below, the proposed new subparagraph (h) to section 0.461, which provides for the expedited processing of certain FOIA requests. The specific language of the amendments to Part 0 is set forth in the Appendix.

¹ Pub. L. No. 104-231, 110 Stat. 3048 (1996), *codified at scattered subsections of 5 U.S.C. § 552*.

² *Amendment of Part 0 of the Commission's Rules to Implement the Electronic Freedom of Information Act Amendments of 1996*, Notice of Proposed Rulemaking, GC Docket No. 97-143, FCC 97-198 (rel. June 19, 1997) (*Notice*), published at 62 Fed. Reg. 34188 (June 25, 1997).

³ Reporters Committee for Freedom of the Press (Reporters Committee) and the Regulatory Affairs Committee of the Student Council of Edgewood Senior High School, Ashtabula, Ohio (Edgewood Students).

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3. The Edgewood Students sought clarification of the method for filing FOIA requests. As they noted, FOIA requests can currently be filed by United States mail, hand delivery, or by electronic mail at <foia@fcc.gov>. FOIA requests may also be filed by facsimile. The *Notice* proposed no changes in filing procedures. However, based on the Edgewood Students's comments, we believe section 0.461 should be amended to reflect the option of filing FOIA requests through electronic mail or by facsimile. We will therefore amend section 0.461 of our Rules to indicate that FOIA requests can be filed electronically. Similarly, we will modify our proposed rule for expedited processing of FOIA requests, section 0.461(h), to reflect the possibility of filing such requests through electronic mail. However, we do not at this time envision the filing of FOIA requests or applications for review through the electronic comment filing system (ECFS) currently being developed.⁴ Once that system is fully operational, we may reassess its applicability to the FOIA process.

4. The Edgewood Students's comments also addressed the availability of information on our Internet site. A wide variety of FCC information is already available on the Internet site, and more is added regularly. When the new electronic document filing system is in place, even more records will be available through the Internet. The Edgewood Students ask that the Commission's RIPS system⁵ be made accessible through our Internet site. However, the RIPS system will be replaced by the ECFS system under development, which will be Internet-accessible.⁶

5. Finally, we note that we did not, as the Reporters Committee's comments feared, adopt any procedures that burden requests for expedited FOIA processing. Our rules simply track the language of the EFOIA and are designed to process such requests speedily.

Procedural Matters

6. In the *Notice*, we certified that the proposed rules "[would] not, if promulgated, have a significant economic impact on a substantial number of small entities."⁷ No comments were received concerning this certification. The rules adopted in this Order implement the amendments to the FOIA enacted through the EFOIA. There is no reason to believe that the revised rules will impose any costs on FOIA requesters beyond those costs incurred under our former rules. Accordingly, we certify, pursuant to section 605(b) of the Regulatory Flexibility Act, that the rules adopted herein will not

⁴ *Electronic Filing of Documents in Rulemaking Proceedings*, Notice of Proposed Rulemaking, GC Docket No. 97-113, FCC 97-113 (rel. Apr. 7, 1997) (*Electronic Filing of Documents*).

⁵ The Record Image Processing System (RIPS) provides access to comments filed with the Commission in notice and comment rulemaking proceedings, as well as a variety of filings in other kinds of docketed proceedings (e.g., tariff investigations, formal hearings before Administrative Law Judges, and applications by Bell Operating Companies to provide out-of-region long distance service). See *Electronic Filing of Documents*, at ¶6.

⁶ The Edgewood Students's other suggestions for placement of information on the Internet have been forwarded to the Office of Public Affairs for consideration.

⁷ *Notice* ¶ 12, citing, 5 U.S.C. § 605(b).

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have a significant economic impact on a substantial number of small entities. The Secretary shall send a copy of this certification to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will also be published in the Federal Register.

Ordering Clauses

7. Accordingly, IT IS ORDERED that pursuant to sections 4(i), 303(r), and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 154(j), and the Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104-231, 110 Stat. 3048 (1996), Part 0 of the Commission's Rules is amended as set forth in the Appendix.

8. IT IS FURTHER ORDERED that the rules adopted herein WILL BECOME EFFECTIVE upon publication in the Federal Register. The rules merely codify provisions of the EFOIA designed to benefit FOIA requesters or otherwise incorporate procedural rules that benefit requesters. We therefore find, for good cause, that the rules should be made effective upon publication.⁸

FEDERAL COMMUNICATIONS COMMISSION



William F. Caton
Acting Secretary

⁸ See 5 U.S.C. § 553(d)(3).

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APPENDIX

(AMENDED LANGUAGE HIGHLIGHTED)

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 0 -- COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

AUTHORITY: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.441 is revised as follows:

§ 0.441 General.

Any person desiring to obtain information may do so by writing or coming in person to any of the Commission's offices. A broader range of information and more comprehensive information facilities are available at the Commission's main office in Washington, D.C., however, and inquiries of a general nature should ordinarily be submitted to that office. **A wide range of information is also available from the Commission's World Wide Web site located at <<http://www.fcc.gov>>.**

3. Section 0.443 is revised as follows:

§ 0.443 General information office.

The **Public Service Division of the Office of Public Affairs** is located at 1919 M Street, N.W., Washington, D.C. Here, the public may obtain copies of the **"Federal Communications Commission Information Seekers Guide,"** which is a handbook for obtaining information from the FCC. This office also maintains current and back issues of public notices of Commission actions, formal documents adopted by the Commission, and **copies of fact sheets that answer general questions about the Commission. Many such recent items may also be obtained from the Commission's World Wide Web site located at <<http://www.fcc.gov>>.** Commission documents listed in Section 0.416 are published in the FCC Record, and many such documents or summaries thereof are also published in the Federal Register.

4. Section 0.453 is revised as follows:

§ 0.453 Public reference rooms.

The Commission maintains the following public reference rooms at its offices in Washington, DC, Gettysburg, Pennsylvania, and Columbia, Maryland. **Much of the information available from the public reference rooms may also be retrieved from the Commission's World Wide Web site at <<http://www.fcc.gov>>.**

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5. Section 0.455 is revised as follows:

§ 0.455 Other locations at which records may be inspected.

Except as provided in §§ 0.453, 0.457 and 0.459, records are routinely available for inspection in the offices of the Bureau or Office which exercises responsibility over the matters to which those records pertain (see § 0.5), or will be made available for inspection at those offices upon request. **Many of these records may be retrieved from the Commission's site on the World Wide Web, located at <<http://www.fcc.gov>>.** Upon inquiry to the appropriate Bureau or Office, persons desiring to inspect such records will be directed to the specific location at which the particular records may be inspected. A list of Bureaus and Offices and examples of the records available at each is set out below.

* * *

6. Section 0.460 is amended as follows:

§ 0.460 Requests for inspection of records which are routinely available for public inspection.

(a) Sections 0.453 and 0.455 list those Commission records which are routinely available for public inspection and the places at which those records may be inspected. Subject to the limitations set out in this section and to the provisions of § 0.466 and paragraph (1) of this section, a person who wants to inspect such records need only appear at the specified location and ask to see the records. **Many such records also are available through the Commission's site on the World Wide Web, located at <<http://www.fcc.gov>>.** Commission documents listed in Section 0.416 are published in the FCC Record, and many such documents or summaries thereof are also published in the Federal Register.

* * *

7. Section 0.461 is amended as follows:

§ 0.461 Requests for inspection of materials not routinely available for public inspection.

* * *

(a) (1) The records in question must be reasonably described by the person requesting them, so as to permit their location by staff personnel. See § 0.460(c).

(2) **The person requesting records under this section may specify the form or format of the records to be produced.**

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(d)(1) Requests shall be delivered or mailed to the Managing Director, **sent by electronic mail to <foia@fcc.gov>, or sent by facsimile.** (For purposes of this section, the custodian of the records is the Chief of the appropriate Bureau or Office.)

* * *

(3) An original and two copies of the request shall be submitted. **If the request is submitted by electronic mail, only one copy need be submitted.** If the request is for materials not open to routine public inspection under § 0.457(d) or § 0.459, one copy of the request will be mailed by the custodian of the records to the person who originally submitted the materials to the Commission.

* * *

(g)(1) The custodian of the records will make every effort to act on the request within **20** working days after it is received by the FOIA Control Office. If it is not possible to locate the records and to determine whether they should be made available for inspection within **20** working days, the custodian may, in any of the following circumstances, extend the time for action by up to 10 working days:

(A) It is necessary to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(B) It is necessary to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(C) It is necessary to consult with another agency having a substantial interest in the determination of the request, or among two or more components of the Commission **having substantial subject matter interest therein.**

(2) **The custodian of the records will notify the requester in writing of any extension of time exercised pursuant to paragraph (g)(1).** If it is not possible to locate the records and make the determination within the extended period, the person or persons who made the request will be **provided an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange an alternative time frame for processing the request or a modified request,** and asked to consent to an extension or further extension. If the requester agrees to an extension, the custodian of the records will confirm the agreement in a letter specifying the length of the agreed-upon extension. If he or she does not agree to an extension, the request will be denied, on the grounds that the custodian has not been able to locate the records and/or to make the determination within the period for a ruling mandated by the Freedom of Information Act, 5 U.S.C. 552. In that event, the custodian will continue to search for and/or assess the records and will advise the person who made the request of further developments; but that person may file an application for review by the Commission. When action is taken by the custodian of the records, written notice of the action will be given.

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(h)(1) Requesters who seek expedited processing of FOIA requests shall submit such requests, along with their FOIA requests, to the Managing Director, as described in § 0.461(d). If the request is enclosed in an envelope, the envelope shall be marked "Request for Expedited Proceeding -- FOIA Request." An original and two copies of the request for expedition shall be submitted, but only one copy is necessary if submitted by electronic mail. When the request is received by the Managing Director, it, and the accompanying FOIA request, will be assigned to the FOIA Control Office, where it will be date-stamped and assigned to the custodian of records.

(2) Expedited processing shall be granted to a requester demonstrating a compelling need that is certified by the requester to be true and correct to the best of his or her knowledge and belief.

(3) For purposes of this subsection, "compelling need" means --

(A) that failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(B) with respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public concerning actual or alleged Federal Government activity.

(4)(A) Notice of the determination as to whether to grant expedited processing shall be provided to the requester by the custodian of records within 10 calendar days after receipt of the request by the FOIA Control Office. Once the determination has been made to grant expedited processing, the custodian shall process the FOIA request as soon as practicable.

(B) If a request for expedited processing is denied, the person seeking expedited processing may file an application for review within five working days after the date of the written denial. The application for review and the envelope containing it (if any) shall be captioned "Review of FOIA Expedited Proceeding Request." The application for review shall be delivered or mailed to the General Counsel. (For general procedures relating to applications for review, *see* § 1.115 of this chapter.) The Commission shall act expeditiously on the application for review, and shall notify the custodian of records of the disposition of such an application for review.

(i)(1) If a request for inspection of records submitted to the Commission in confidence under § 0.457(d) or § 0.459 is granted, an application for review of the action may be filed only by the person who submitted the records to the Commission. The application for review and the envelope containing it (if any) shall be captioned "Review of Freedom of Information Action." The application for review shall be filed within 10 working days after the date of the written ruling, shall be delivered or mailed to the General Counsel, and shall be served on the person who filed the request for inspection of records. The first day to be counted in computing the time period for filing the application for review is the day after the date of the written ruling. If an application for review is not filed within this period, the records will be produced for inspection. The person who filed the

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request for inspection of records may respond to the application for review within 10 working days after it is filed.

* * *

(j) Except as provided in paragraph (i) of this section, an application for review of an initial action on a request for inspection may be filed only by the person who made the request. The application shall be filed within 30 days after the date of the written ruling by the custodian of records, and shall be captioned, "Review of Freedom of Information Action." The envelope (if any) shall also be so captioned. The application shall be delivered or mailed to the General Counsel and shall be served on the person (if any) who originally submitted the materials to the Commission. That person may file a response within 10 working days after the application for review is filed. If the records are made available on review, the person who submitted them to the Commission (if any) will be afforded 10 working days after the date of the written ruling to seek a judicial stay. *See* paragraph (i) of this section. The first day to be counted in computing the time period for filing the application for review or seeking a judicial stay is the day after the date of the written ruling. (For general procedures relating to applications for review, see §1.115 of this chapter.)

(k) [Reserved]

(l) The Commission will make every effort to act on an application for review of an action on a request for inspection of records within 20 working days after it is filed. *See*, however, paragraph (i)(2) of this section. If it is not possible to locate the records and to determine whether they should be made available for inspection within 20 working days, the General Counsel may, in the following circumstances and to the extent time has not been extended under paragraphs (g) (1)(A), (B), or (C) of this section, extend the time for action up to 10 working days. (The total period of extensions taken under this paragraph and under paragraph (g) of this section without the consent of the person who submitted the request shall not exceed 10 working days.):

* * *

(3) It is necessary to consult with another agency having a substantial interest in the determination of the request or among two or more components of the Commission **having substantial subject matter interest therein.**

* * *

(m) Subject to the application for review and judicial stay provisions of paragraphs (i) and (j) of this section, if the request is granted, the records will be produced for inspection at the earliest possible time.

(n) Staff orders and letters denying requests for inspection are signed by the official (or officials) who give final approval of their contents. If a request is denied by the Commission, notice of denial will set forth the names of the Commissioners participating in the decision.

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(o) Records shall be inspected within 7 days after notice is given that they have been located and are available for inspection. After that period, they will be returned to storage, and additional charges may be imposed for again producing them.